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U.S. DISTRICT COURT E.D.N.Y.

★ NOV 20 2013 ★

**United States District Court**

**EASTERN DISTRICT OF NEW YORK**

LONG ISLAND OFFICE

-----X  
**EVAN FIDELMAN,**

**COMPLAINT**

Plaintiff,

**TRIAL BY JURY**

**DEMANDED**

-against-

**CV 13 6448**

CASE NO.: \_\_\_\_\_

**COUNTY OF SUFFOLK, AND Police Officers  
PERRY SMITH III, and Police Officers  
JOHN DOE 1-5, (The Names of Which are  
Fictitious), Individually,**

**FEUERSTEIN, J**

**TOM RECEIVED**

Defendants,  
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NOV 20 2013

**EDNY PRO SE OFFICE**

**FIRST:** The nature of Plaintiff's claims are to recover monetary damages from all defendants, including, but not limited to punitive damages against POLICE OFFICERS PERRY SMITH III, and POLICE OFFICERS JOHN DOE 1-5, individually, for violation of constitutional rights, pursuant to 42 USC § 1983, false arrest, physical abuse, excessive force, deprivation of liberty pursuant to the First, Fourth Fifth and Fourteenth Amendments of the United States Constitution, and/or Article I, § § 5, 6, 8, 9, 12 of the New York Constitution, and negligence carelessness and recklessness of COUNTY OF SUFFOLK, its agents, servants and/or employees, its agents, servants and/or employees including, but not limited to the COUNTY OF SUFFOLK, THE SUFFOLK COUNTY POLICE DEPARTMENT, POLICE OFFICER PERRY SMITH III, AND POLICE OFFICERS JOHN DOE 1-5, individually, for false arrest, false imprisonment,

abuse of process, excessive force, defamation of character and mental anguish/psychological and punitive damages.

**SECOND:** The aforesaid defendants, at all relevant times, COUNTY OF SUFFOLK, and POLICE OFFICE PERRY SMITH III, and POLICE OFFICERS JOHN DOE 1-5, individually, were acting unlawfully under the color of state law in holding Plaintiff EVAN FIDELMAN, against his will, with knowledge and/or reason to know EVAN FIDELMAN, did not commit a crime and with express purpose of denying his Constitutional rights by placing him against his will handcuffed to a desk.

**THIRD:** That all times hereafter mentioned, the Plaintiff EVAN FIDELMAN was a resident of the County of Suffolk, state of New York.

**FOURTH:** That at all times hereafter mentioned, the Defendant, COUNTY OF SUFFOLK, was and still is a municipal corporation organized and existing under the laws of the State of New York.

**FIFTH:** That at all times hereafter mentioned, the Defendants, POLICE OFFICER PERRY SMITH III, and POLICE OFFICERS JOHN DOE 1-5 were acting within the scope of their employment with the COUNTY OF SUFFOLK, and its agents the SUFFOLK COUNTY POLICE DEPARTMENT.

**SIXTH:** THAT ON OR ABOUT November 20<sup>th</sup>, 2012, and within the (90) days after the accrual of the claim sued upon herein, Plaintiffs served upon the County of Suffolk, and Suffolk County Police Department a duly executed Notice of Claim.

**SEVENTH:** That more than thirty (30) days have elapsed since the Notice of

Claim was served and the Comptroller and Defendants, have failed, neglected, and refused to pay, settle, compromise or adjust the claim of the Plaintiffs herein.

**EIGHTH:** That this action was commenced within one (1) year and ninety (90) days from the date of the claim accrued.

### **COUNT I**

**42 USC § 1983 CLAIM AGAINST POLICE OFFICERS JOHN DOE 1-5, FOR DEPRIVATION OF HIS FOURTH AMENDMENT RIGHTS AND NY STATE CONSTITUTIONAL RIGHTS.**

**NINTH:** Plaintiff repeats, reiterates and re-alleges all of the allegation set forth above.

**TENTH:** That on or about August 24<sup>th</sup> 2012, at approximately 9:10 p.m., Plaintiff EVAN FIDELMAN was involved in an automobile accident at the intersection of Deer Park Avenue and Kenmore Street, County of Suffolk, State of New York. Plaintiff, EVAN FIDELMAN, was a driver of a 2002 silver Honda Civic, bearing New York license plate number DHN8774 and was involved in an automobile accident, with a vehicle driven by John Newland, driver and owner of a 2009 Dodge, bearing New York state license plate number EWB3430. Thereafter, police officer PERRY SMITH III, and police officers John Doe 1-5, arrived at the scene of the accident, where they wrongfully accused Plaintiff EVAN FIDELMAN of driving under the influence of alcohol and despite the absence of any criminal wrongdoing, placed him under arrest.

**ELEVENTH:** That on or about the time that Plaintiff EVAN FIDELMAN was taken to the Second Precinct (Suffolk County), 1071 Park Avenue, Huntington, NY,

where Plaintiff EVAN FIDELMAN was thrown to the ground and assaulted, thereby physically and mentally injuring him. Plaintiff EVAN FIDELMAN was forced to endure the next eight (8) or so hours at the second precinct handcuffed to a desk until he was arraigned in Central Islip the next morning.

**TWELFTH:** That Police Officer PERRY SMITH III, and Police Officer JOHN DOE 1-5 used excessive force, handcuffed, and deprived Plaintiff EVAN FIDELMAN of his liberty despite the facts that he had not committed a crime.

**THIRTEENTH:** The POLICE OFFICER PERRY SMITH III, and POLICE OFFICERS JOHN DOE 1-5 with the express intent of preventing plaintiff from further expressing his First, Fourth and Fourteenth Amendment rights under the United States Constitution and Article, I, § 6, 8, 12, rights to free speech and liberty under the New York State Constitution and took him into custody against his will by placing PLAINTIFF in handcuffs and handcuffing him to a desk in the 2<sup>nd</sup> precinct for several hours.

**FOURTEENTH:** That at all times POLICE OFFICER PERRY SMITH and POLICE OFFICERS JOHN DOE 1-5, acted within the scope of their employment and under the authority of color of Police Officers.

## **COUNT II**

### **MUNICIPAL LIABILITY**

**FIFTEENTH:** Plaintiff repeats, reiterates and re-alleges all of the allegations set forth above.

**SIXTEENTH:** The Defendant, COUNTY OF SUFFOLK, its employees, agents

and/or servants, failed to take necessary steps to prevent this occurrence; failed to properly train its employees, agents and/or servants in arrest procedures; failed to control and supervise its employees, agents/or servants; and failed to prevent the aforesaid pain and suffering, defamation, arrest, detainment and permanent psychological injuries to the Plaintiff and were otherwise reckless, careless, and negligent.

**SEVENTEENTH:** That as a result of the above referenced negligence; Plaintiff was caused to sustain pain and suffering, defamation, arrest, detainment and permanent psychological injuries.

**EIGHTEENTH:** That as a result of the above, the Plaintiff demands judgment against the Defendant, COUNTY OF SUFFOLK, in the sum of FIVE MILLION (\$5,000.000.00) DOLLARS.

### **COUNT III**

**AGAINST POLICE OFFICER PERRY SMITH III AND POLICE OFFICERS JON DOE 1-5 INDIVIDUALLY, FOR DEPRIVATION OF LIBERTY**

**NINETEENTH:** Plaintiff repeats, reiterates and re-alleges all of the allegations set forth above.

**TWENTY:** Although the Defendants, POLICE OFFICER PERRY SMITH, and POLICE OFFICERS JOHN DOE 1-5, knew their conduct of detaining and arresting Plaintiff EVAN FIDELMAN was unlawful and not warranted, as well as in violation of his constitutional rights, the defendants detained the Plaintiff EVAN

FIDELMA for eight hours, handcuffed to a desk, even though they knew or had reason to know they were making an unlawful arrest.

**COUNT IV**

**AGAINST DEFENDANTS, SUFFOLK COUNTY POLICE OFFICER PERRY SMITH III, AND POLICE OFFICERS JOHN DOE 1-5 INDIVIDUALLY, FOR NEGLIGENCE.**

**TWENTY:** Plaintiff repeats, reiterates and re-alleges all of the allegations set forth above.

**TWENTY-ONE:** That on August 24<sup>th</sup> 2012, at approximately 9:50 p.m., and the hours thereafter, the aforesaid Defendants, without cause of provocation, carelessly, negligently, and recklessly and maliciously, detained and arrested the plaintiff EVAN FIDELMAN, despite knowing that there was no cause or grounds therefore.

**TWENTY-TWO:** That as a result of the above references negligent actions, this Plaintiff sustained physical injury, mental and pecuniary losses and losses of enjoyment of life.

**TWENTY-THREE:** That as a result of the above negligence, Plaintiff demands judgment against the Defendants in the amount of Five Million (\$5,000,000.00) dollars and punitive damages.

**TWENTY-FOUR:** That by reason of the foregoing, Plaintiff seeks punitive damages and demands judgment against the Defendants in the amount of Five Million (\$5,000,000.00) dollars.

**COUNT V**

**AGAINST DEFENDANTS POLICE OFFICER PERRY SMITH III AND  
POLICE OFFICERS JOHN DOE 1-5 FOR EXCESSIVE FORCE.**

**TWENTY-FIVE:** Plaintiff repeats, reiterates and re-alleges all of the allegations set forth above.

**TWENTY-SIX:** On August 24<sup>th</sup> 2012, while Plaintiff Evan Fidelman was unlawfully arrested and detained at the second precinct in Suffolk County, POLICE OFFICER PERRY SMITH and POLICE OFFICER JOHN DOE 1-5 attacked Plaintiff EVAN FIDELMAN by violently throwing him into the ground, pinning his arms to the ground, jumping on top of him and forcibly striking his head, torso, legs, and arms.

**TWENTY-SEVEN:** THAT Plaintiff EVAN FIDELMAN suffered mental and physical injuries as a result of this incident, as a result of the excessive force used to detain the PLAINTIFF.

**COUNT VI**

**AGAINST DEFENDANTS POLICE OFFICERS PERRY SMITH III AND  
POLICE OFFICERS JOHN DOE 1-5 FOR ASSAULT**

**TWENTY- EIGHT:** Plaintiff repeats, reiterates and re-alleges all of the allegations set forth above.

**TWENTY-NINE:** On August 24<sup>th</sup> 2012, while Plaintiff Evan Fidelman was unlawfully arrested and detained at the second precinct in Suffolk County, POLICE OFFICER PERRY SMITH and POLICE OFFICER JOHN DOE 1-5 attacked Plaintiff Evan Fidelman by violently throwing him into the ground, pinning his

arms to the ground, jumping on top of him and forcibly struck his head, torso, legs, and arms.

**THIRTY**: THAT Plaintiff EVAN FIDELMAN suffered mental and physical injuries as a result of this incident, as a result of the excessive force used to detain the PLAINTIFF.

**COUNT VII**

**AGAINST DEFENDANTS POLICE OFFICERS JOHN DOE 1-3 FOR BATTERY**

**THIRTY-ONE**: Plaintiff repeats, reiterates and re-alleges all of the allegations set forth above.

**TWENTY-TWO**: On August 24<sup>th</sup> 2012, while Plaintiff Evan Fidelman was unlawfully arrested and detained at the second precinct in Suffolk County, POLICE OFFICER PERRY SMITH and POLICE OFFICER JOHN DOE 1-5 attacked Plaintiff EVAN FIDELMAN by violently throwing him into the ground, pinning his arms to the ground, jumping on top of him and forcibly struck his head, torso, legs, and arms.

**THIRTY-THREE**: THAT Plaintiff EVAN FIDELMAN suffered mental and physical injuries as a result of this incident, as a result of the excessive force used to detain the PLAINTIFF.

**WHEREFORE**, Plaintiff demands judgment pursuant to 42 United States Code, Section 1983 and for attorney's fees under section 1988, and for his state Common Law claims, for monetary compensation, for pain and suffering and loss of



reputation and punitive damages, and on all Claims, in the amount of thirty-five million dollars (\$35,000.000.00) against the Defendants, for whatever further and other relief this court deems just and proper, together with the costs, disbursements of this action.

Dated: New York, New York  
November 20<sup>th</sup>, 2013

Yours, etc.,

By: 

PLAINTIFF  
EVAN FIDELMAN

**United States District Court**

**EASTERN DISTRICT OF NEW YORK**

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**EVAN FIDELMAN,**

**SUMMONS AND  
COMPLAINT**

Plaintiff,

**TRIAL BY JURY  
DEMANDED**

-against-

**CASE NO.:** \_\_\_\_\_

**COUNTY OF SUFFOLK, AND Police Officers  
PERRY SMITH III, and Police Officers  
JOHN DOE 1-5, (The Names of Which are  
Fictitious), Individually,**

Defendants,

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**SUMMONS AND COMPLAINT**

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EVAN FIDELMAN  
4 NEW JERSEY COURT  
DIX HILLS, NEW YORK 11746  
631 839-5574  
PLAINTIFF